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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

**NORTHWEST ENVIRONMENTAL
DEFENSE CENTER, WILDEARTH
GUARDIANS, and NATIVE FISH
SOCIETY,**

Plaintiffs,

v.

**U.S. ARMY CORPS OF ENGINEERS
and NATIONAL MARINE
FISHERIES SERVICE,**

Defendants,

and

CITY OF SALEM and MARION COUNTY,

Defendant-Intervenors,

Case No. 3:18-cv-00437-HZ

**NOTICE OF JOINT SUBMISSION
RE: FEDERAL RULE OF EVIDENCE
706 NEUTRAL EXPERT**

Counsel for Plaintiffs and Federal Defendants have conferred about potential neutral experts for the Court to appoint under Federal Rule of Evidence (FRE) 706, giving consideration to the Court's proposal for expertise in health and safety issues such as flood risk, dam safety, drinking water, or other relevant concerns. Considering Plaintiffs' proposal that injunctive relief not interfere with the Corps' discretion to conduct essential flood risk management operations, the United States' opposition to Plaintiffs' injunction motion will address the hydrologic and hydraulic impacts of Plaintiffs' proposed dam operations. Accordingly, the parties focused their search on individuals with experience in hydrologic and hydraulic engineering.

Plaintiffs and Federal Defendants have identified four individuals who could potentially assist the court as a FRE 706 neutral expert. The parties based their proposed selections on a good faith effort to identify qualified, neutral candidates. The parties, however, did not contact the individuals, to avoid any bias that could arise from such contact. As a result, the parties' assessment of the candidates' qualifications and potential concerns with each candidate are based on publically available information and not upon a more thorough assessment following an interview with the candidates. The parties agree the Court is in the best position to determine the candidates' availability, assess any underlying conflicts or bias, and identify the expertise and experience that would most assist the Court once it has reviewed Federal Defendants' response materials.

In accordance with the above, Federal Defendants have identified the following candidates, who Federal Defendants believe are highly qualified individuals that lack any direct conflicts or biases that would preclude their participation as a FRE 706 Court-appointed expert.¹

¹ Federal Defendants note and wish to preserve their objection to appointment of any Rule 706 expert because of the costs involved and because outside expertise ultimately is unnecessary for the full and fair presentation of evidence in this case.

Plaintiffs' comments on the individuals are presented below the candidate.

- Cristopher Goodell. Principal Consultant for Hydraulics and Hydrology with Kleinschmidt Associates. Mr. Goodell has over 25 years of experience in river mechanics, sediment transport, hydraulic design, and computational hydraulic modeling. His contact information can be found at <https://www.kleinschmidtgroup.com/leadership-post/chris-goodell/>, and Mr. Goodell's CV is attached as Exhibit 1.

Plaintiffs' Comments: Mr. Goodell primarily focuses on modeling so he has a narrow area of expertise. He previously worked for the Army Corps of Engineers in the Portland District and has also contracted with the Corps on Columbia River dam projects so there is a potential for bias.

- Dr. Neil Grigg. Professor, Civil and Environmental Engineering, Colorado State University. Dr. Grigg has over 50 years of professional experience and possesses extensive knowledge and expertise on integrated water resource management, including on dam and other infrastructure operations and management (*see, e.g.,* www.researchgate.net/profile/Neil_Grigg). Dr. Grigg's CV, including contact information, is attached as Exhibit 2.

Plaintiffs' Comments: Dr. Grigg appears to have extensive experience in water resource management but little specifically related to dam operations or dam management. Therefore, he may have less expertise to opine on hydrologic impacts of the dam operations proposed by Plaintiffs.

Plaintiffs have identified the following candidates, which they believe are highly qualified individuals that lack any direct conflicts or biases that would preclude their participation as a Rule 706 court-appointed expert. Federal Defendants' comments on the individuals are presented below the candidate.

- Thomas Hepler. Senior Consultant, Schnabel Engineering South. Mr. Hepler specializes in hydraulic and structural engineering related to dams, spillways, and outlet works. He worked for the Bureau of Reclamation for 35 years and has been at Schnabel Engineering for the past 6 years. He has performed risk analysis for dams and was the primary engineer for the Elwha and several other dam removals on the West Coast, which included evaluation and implementation of reservoir drawdowns and other water management issues. He has co-authored several guidance documents related to dam safety and dam decommissioning. Mr. Hepler's linkedin profile is attached as Exhibit 3.

Federal Defendants' Comments: Mr. Hepler's professional experience and expertise appears more focused on structural engineering and analysis associated with dam

removal and less on hydraulics and water management. Federal Defendants believe this expertise may be less relevant to the remedy proceedings than the other candidates who have substantial expertise in both hydraulic and hydrologic engineering.

- Dr. Desiree Tullos. Professor, Biological and Ecological Engineering, Oregon State University. Dr. Tullos specializes in ecohydraulics, river engineering and restoration, systems analysis in water resources management, and hydrodynamic modeling. She has almost twenty years of experience and numerous publications on hydrologic impacts related to dam removal or failure, reservoir operations, climate change, and other riverine issues. A recent publication focused on reservoir operations and climate change within the Willamette Project. Her CV is attached as Exhibit 4.

Federal Defendants' Comments: Dr. Tullos' professional research appears to be focused predominantly on researching the effects of dam removal—an action not at issue in these proceedings. Dr. Tullos also has developed professional analysis and opinions on the Corps' Willamette Valley Project operations at issue in the remedy proceedings,² unlike the other candidates identified herein.

In the event that the Court, after reviewing the Federal Defendants' response materials, decides that a different type of expertise would be helpful, the parties can suggest other names.

Plaintiffs and Federal Defendants have also conferred about the remaining schedule in this case. They propose submitting to the Court suggested questions or issues for the FRE 706 expert to address in their expert report. Plaintiffs and Federal Defendants would exchange proposed questions or issues with each other on December 7 and submit their proposed questions to the Court on December 11. They also propose allowing more time for the FRE 706 expert report by moving the deadline for that report from January 15 to January 29; moving the discovery deadline from March 2 to March 16; and moving the final status conference with the Court from March 11 to sometime the week of March 22. The evidentiary hearing would remain set for May 6-7, 2021.

With regard to the mechanics of the FRE 706 appointment and duties—such as

² See http://osu-wams-blogs-uploads.s3.amazonaws.com/blogs.dir/2943/files/2020/08/Tullos-et-al-2020_Reservoir-Operational-Performance-Subject-toClimate-and-Management-Changes-in-theWillamette-River-Basin.pdf.

communications, payment, and scope of duties—the parties will confer with the Court during their status conference on December 2 and propose to include further details on those issues in their December 11, 2020 submission to the Court.

Dated: November 13, 2020

Respectfully submitted,

/s/Lauren M. Rule

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